

1991

## Estes v. Van Der Veur : Petition for Writ of Certiorari

Utah Supreme Court

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### Recommended Citation

Legal Brief, *Estes v. Van Der Veur*, No. 910613.00 (Utah Supreme Court, 1991).  
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UTAH COURT OF APPEALS

BRIEF

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IN THE UTAH STATE SUPREME COURT

FEB 3 1992

NEWTON C. ESTES

Plaintiff

PETITION FOR WRIT

OF CERTIORARI

FRED VANDER VEUR

Warden, CUCF

Defendant

of Case # 910613-CA

Case # 920103

To review 1/27/92 published affirmation  
of Judge Tibbs' habeas dismissal for my naming  
the warden as defendant

QUESTIONS FOR REVIEW

1) Is a Foote-related petition governed by  
the words of 65B, or is a new "interpretation  
necessary" so the petition can now be viewed as  
merely an appeal of an early release denial but thus  
improperly directed to a warden who has no such  
power or had no such participation?

2) Does Foote contemplate actions "to bring  
the appropriate respondent [Board of Pardons] before  
the court" because <sup>now</sup> under 65B(1)(7) "it appears  
that a person other than the respondent [warden]  
has custody."?

3) If it does, was Judge Tibbs' dismissal a  
denial of due process since that rule also directs  
that the court's "hearing order... may be served  
on the person... with the same effect as if that  
person had been named as respondent."?

4) If Foote's "habeas review of the board of pardons actions" was meant to require an additional defendant, will claims of constitutional violations also be dismissed because <sup>liberative</sup> defendant warden neither participated nor had power to end confinement? Would Rule 65B thus need re-writing?

5) Does agreement the Board "is the only entity that can release Estes from his confinement" effectively suspend habeas corpus since 65B(4)(b) says the habeas judge shall "enter... such further orders with respect to... custody, bail or discharge..."?

### ARGUMENT AND CONCLUSION

A review and reversal are necessary to prevent certifying that case law allows the rules governing our most treasured freedom to be no longer taken at face value but are subject to new and radical dismissal-oriented interpretations each time a due process application is made for an answer and hearing on the merits. (With Boy Padded, what new twist will dismiss my #7?)

Respectfully submitted this 30th day of January 1992  
Newton C. Estes

PROOF OF SERVICE: I hereby certify that on this 30<sup>th</sup> day of January I mailed a facsimile of this Certification to Lorenzo K. Miller at 6100 S 300E #403 Salt Lake City 84107

Newton C. Estes